

3 FAM 3530 THE FAMILY AND MEDICAL LEAVE ACT OF 1993

3 FAM 3531 AUTHORITY

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Section II of Pub.L. 103-3, (5 U.S.C. 6381-6387).

b. 5 CFR 630.1200 and 890.502

3 FAM 3532 PURPOSE

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

These regulations provide a standard approach for family and medical leave by establishing an entitlement of 12 administrative workweeks of paid or unpaid leave during any 12-month period for certain specified family and medical needs.

3 FAM 3533 APPLICABILITY

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

These regulations apply to:

(1) All full-time and part-time employees serving under permanent appointments who have completed at least 12 months of service (not required to be recent or consecutive months).

(2) Employees serving under temporary or intermittent appointments (provided they have been employed for at least 12 months (need not be consecutive) including at least 1,250 hours of service during the 12-month period immediately preceding an event that would establish eligibility for the program).

(3) Foreign Service National employees and temporary and intermittent employees serving overseas are not covered by these regulations.

3 FAM 3534 GENERAL

3 FAM 3534.1 Leave Entitlement

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. An employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- (1) The birth of a son or daughter of the employee and the care of such son or daughter;
- (2) The placement of a child with the employee for adoption or foster care;
- (3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or
- (4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

b. An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave as described above.

c. Except as provided in section 3 FAM 3534.1d, the 12-month period referred to in section 3 FAM 3534.1a. begins on the date an employee first takes leave for a family or medical need specified in that paragraph and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

d. The entitlement to a total of 12 administrative workweeks of leave under section 3 FAM 3534.1a (1) and (2):

- (1) May begin prior to or on the actual date of birth or placement for adoption or foster care; and
- (2) Shall expire 12 months after the date of birth or placement.

Leave for a birth or placement must be concluded within 12 months after the date of birth or placement.

e. Additional details are found in 5 CFR 630.1213.

3 FAM 3534.2 Intermittent Leave or Reduced Leave Schedule

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Leave under section 3 FAM 3534.1a(1) or (2) may not be taken intermittently or on a reduced leave schedule unless the employee and the supervisor both agree.

b. Leave under section 3 FAM 3534.1a(3) or (4) may be taken intermittently or on a reduced leave schedule when medically necessary, subject to the provisions of section 3 FAM 3434.1e.

c. 5 CFR 620.1209 provides details on employees under an intermittent or reduced leave schedule.

3 FAM 3534.3 Substitution of Paid Leave

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Except as provided in section 3434.3b, leave taken under the 12-week entitlement shall be leave without pay.

b. An employee may elect to substitute the following paid time off for any or all of the period of leave:

(1) Accrued or accumulated annual or sick leave consistent with current regulations governing the granting and use of annual or sick leave;

(2) Advanced annual or sick leave approved under the provisions of 3 FAM 3415, and 3 FAM 3424;

(3) Leave made available to an employee under the Voluntary Leave Transfer Program;

(4) Compensatory time off; and

(5) Credit hours accrued under a flexible work schedule.

c. A supervisor may not deny an employee's right to substitute paid time off for any or all of the period of leave taken under the 12-week entitlement.

d. A supervisor may not require an employee to substitute paid time off for any or all of the period of leave taken under the 12-week entitlement.

3 FAM 3534.4 Notice of Leave Application Process

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Employees who desire to apply for the Family and Medical Leave Act (FMLA) are required to complete an application form (see 3 FAH-1 H-3530) and submit it to their immediate supervisor who will in turn forward it through appropriate supervisory channels to the bureau executive office. Approval of applicants for the FMLA rests with the bureau Executive Director.

b. 5 CFR 630.1206 provides details on notification procedures.

3 FAM 3534.5 Medical Certificates

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

Applicants seeking leave to care for a family member, or because of personal medical care or treatment, must submit a medical certification form completed by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An employee shall provide the completed medical certification to the supervisor along with the application form, or thereafter as soon as possible. (see Chapter 3 FAH-1 H-3530 for procedures and guidelines concerning the submission of medical certificates.)

3 FAM 3535 EFFECT ON EMPLOYEE BENEFITS

3 FAM 3535.1 Protection of Employment and Benefits

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. Any employee who takes leave under the FMLA shall be entitled, upon return to the agency, to be restored to:

(1) The same position held by the employee when the leave commenced;
or

(2) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. (see 5 CFR 630.1208)

b. If an employee subject to a medical evaluation program (e.g., FS employees) is approved for leave because of a serious health condition that renders an employee unable to perform the essential functions of his or her position, that employee will be required to provide written medical certification from the health care provider that the employee is able to perform these functions prior to returning to duty. Employees shall be notified of this requirement before leave commences, and the cost of the written medical certification will be paid by the agency.

3 FAM 3535.2 Health Benefits

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

a. An employee enrolled in a health benefits plan under the Federal Employees' Health Benefits Program (FEHB) who is placed in an unpaid leave status under the FMLA, may continue his or her health benefits enrollment while in the unpaid leave status and arrange to pay the appropriate employee contributions during the time of unpaid leave or upon returning to duty. Personnel Offices are responsible for ensuring that each employee going on LWOP is counseled about health benefits, and that each employee completes the appropriate statement electing to continue or stop health benefits coverage.

b. An employee granted LWOP status under the FMLA, which in combination with other leave without pay exceeds 365 days of continued coverage, must pay the employee contributions for FEHB directly to the employing office on a current basis to retain coverage.

3 FAM 3536 RECORDS AND REPORTS

(TL:PER-239; 1-30-95)

(State Only)

(Applies to Foreign Service and Civil Service Employees)

The Office of Personnel Management (OPM) requires each agency to maintain records on the use of leave under FMLA. Therefore, the following information must be collected for each employee approved under this program:

- (1) The employee's rate of basic pay;
- (2) The occupational series for the employee's position;
- (3) The number of hours of leave taken; and
- (4) The specific reason for which leave was approved under section 3 FAM 3434.1a. Procedures for implementing this requirement are found in 3 FAH-1 H-3530.

3 FAM 3537 THROUGH 3539 UNASSIGNED